PRINCIPAL AND AGENT—RIGHT OF UNDISCLOSED PRINCIPAL TO SUE—PAROL EVIDENCE RULE.—Without disclosing that he was acting on behalf of the plaintiff, L., an authorized agent, entered into a written contract in which he described himself as "the character". In an action on the contract by the plaintiff against the defendant, the other party to the contract, *held,* that parol evidence was admissible to establish the plaintiff's right to sue. *Rederi Aktienbolaget Trans-Atlantic* v. *Fred Drughorn Ltd.* (1918) 144 L. T. 273, 306.

An undisclosed principal may introduce parol evidence to enable him to maintain an action upon a simple contract made for his benefit by an authorized agent, *Ballard* v. *Friedeberg* (1917) 177 App. Div. 715, 164 N. Y. Supp. 912, even though the defendant at the time he entered into the contract was in ignorance of the agency. *Darrow* v. *H. R. Horne Produce Co.* (C. C. 1893) 57 Fed. 463; *cf. Kelly A. B. Co.* v. *Barber A. P. Co.* (1914) 211 N. Y. 68, 105 N. E. 88. However, an undisclosed principal has no right to sue if the defendant was induced to enter into the contract due to personal trust reposed in the agent. *Winchester* v. *Howard* (1867) 97 Mass. 303; *cf. Crowder* v. *Yovovich* (1917) 84 Ore. 41, 164 Pac. 576. In *Humble* v. *Hunter* (1848) 12 Q. B. 310, it was held that the mere fact that the agent described himself as the owner in a charter-party was sufficient to prevent the undisclosed principal from bringing suit, though there was nothing to show that the contract was personal. If that case is based fundamentally upon the theory that trust was reposed in the agent, it is weak upon its facts. 2, Mechem, Agency (2nd ed.) § 2070, *n.* 54, and has not been followed in analogous situations. *Hawkins* v. *Windhorst* (1912) 87 Kan. 176, 102 Pac. 761; but *cf. New York Brokerage Co.* v. *Wharton* (1909) 143 Iowa 61, 119 N. W. 969. On the other hand, if the case rests upon the theory that parol evidence to show the existence of an undisclosed principal cannot be introduced to vary the terms of a written instrument, it is submitted that the case rests upon a narrow distinction from the cases in which the agent contracts as principal without describing himself as such. *Cf.* Tiffany, Agency § 50. Considering the case in reference to the parol evidence rule, its effect seems to be that where the terms of the written instrument exclude the idea of agency, the undisclosed principal cannot bring suit. Though *Humble* v. *Hunter, supra,* is law, see *Formby Bros.* v. *Formby,* (1910) 102 L. T. R. (N. S.) 116, the courts have shown no tendency to apply it broadly, *cf. Abbott* v. *Atlantic Refining Co.* (1902) 4 Ont. L. R. 701; *Childs* v. *Gilis Construction Co.* (1912) 42 Utah 120, 129 Pac. 356, but on the contrary allow an undisclosed principal to bring an action even where the terms of the written instrument afford a substantial basis for inferring that trust was reposed in the agent. *Pritchard* v. *Budd* (C. C. A. 1896) 76 Fed. 710. It would seem, therefore, that even though a distinction drawn between the facts of *Humble* v. *Hunter, supra,* and those of the principal case be viewed as meticulous, the latter decision is to be supported.

PRINCIPAL AND AGENT—LIABILITY OF AGENT FOR FRAUD OF SUB-AGENT.—The plaintiff consigned cotton to the defendant for sale. The defendant had it delivered to a Muccadam, or warehouseman, upon whom they had agreed, whose duties were to store the cotton and close sales upon the terms fixed by the defendant. The Muccadam was to be compensated in the first instance by the defendant who was to be reimbursed by the plaintiff. The Muccadam fraudulently sold the

cotton and appropriated the proceeds. *Held,* the defendant was liable to the plaintiff for the fraudulent appropriations. *Nensukhdas* v. *Birdichand* (1917) 19 Bombay L. R. 948.

A factor or other agent employed because of his skill and discretion must perform all acts involving these qualities personally, in the absence of a contrary understanding. See *Warren* v. *Martin* (1850) 52 U. S. 209; *Smith* v. *Jefferson Bank* (1906) 120 Mo. App. 527, 97 S. W. 247. He may, however, be given authority to hire another agent for the principal to co-operate with him in the performance of these acts, Huffcut Agency, (2nd ed.) § 95, in which case he is under no liability for the acts of the additional agent. *Morris* v. *Warlick* (1903) 118 Ga. 421, 45 S. E. 407. He may, on the other hand, have only procured the consent of the principal to his hiring another to perform, as his agent, the acts which he otherwise would have had to perform personally. In this case he is liable to the principal for any default by his own agent. *Barnard* v. *Coffin* (1886) 141 Mass. 37, 6 N. E. 364; *Bank of Ky.* v. *Adams Express Co.* (1876) 93 U. S. 174. The law on this subject is fairly well settled, but, as the parties seldom define clearly the relations which they intend to create, a difficult question of fact is often presented. Although the additional agent is hired in the original agent's name, the principal may be in the position of an undisclosed principal to the additional agent, if the employment is in his behalf. *Whitlock* v. *Hichs* (1874) 75 Ill. 460; see *Blackburn* v. *Mason* (1893) 68 L. T. R. (N. S.) 510. Roughly, this would seem to be the case if he is to receive the benefits, furnish the consideration, and have the control. In the principal case the plaintiff was, ultimately, to furnish the consideration, and, as the defendant was under no obligation to perform the services of the Muccadam, the contract was for his benefit. It is true that the defendant was to have the immediate control but it would seem that the plaintiff was the real principal of the additional agent. *Cf. De Bussche* v. *Alt* (1873) 8 Ch. D. 286; *McCants* v. *Wells* (1873) 4 S. C. 381. The court thought otherwise, however, and properly applied the law to its interpretation of the facts.

SPECIFIC PERFORMANCE—CONTRACT TO LEND MONEY ON INSURANCE POLICY.—A life insurance policy was issued which contained the provision that the insurer would lend money thereon to the "insured or owner of the policy". The plaintiff was an assignee who sought to borrow on it. *Held,* that specific performance of the contract to lend would be granted. *Caplin* v. *Penn Mutual Life Ins. Co.* (App. Div. 2nd Dept. 1918) 58 N. Y. L. J. 1987.

Ordinarily, specific performance will not be decreed of an agreement to borrow, *Rogers* v. *Challis* (1859) 27 Beav. 175, or to lend money. *Bradford, etc., R. R.* v. *New York, etc., R. R.* (1890) 123 N. Y. 316, 25 N. E. 499; *Sichel* v. *Mosenthal* (1862) 30 Beav. 371; *South African Territories Ltd.* v. *Wallington* [1898] A. C. 309. The reason for its refusal lies in the fact that the remedy at law is adequate, *Sichel* v. *Mosenthal, supra,* since the damages arising from breach of a contract to borrow or to lend are easily assessable, being, in the absence of special damages, the difference between the contract rate and the market rate of interest, plus the expenses incurred in procuring a new loan. 18 Columbia Law. Rev. 170. The inability to secure a loan elsewhere upon the breach of a contract to lend will not furnish a basis for